



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

Office of the
Chief Counsel

400 Seventh Street, S.W.
Room 8407
Washington, D.C. 20590

Phone: (202) 366-4400
Fax: (202) 366-7041

MAY 25 2004

James J. Vinch, Esq.
State of Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

Dear Mr. Vinch:

Thank you for your May 14, 2004 letter concerning the efforts of the Ohio Environmental Protection Agency to make Ohio's laws and regulations on the transportation of infectious wastes consistent with the requirements in the Federal hazardous material transportation law, 49 U.S.C. § 5101 et seq., and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180.

As we have discussed, it is my understanding that the State of Ohio has adopted the HMR as State requirements applicable to the highway transportation of hazardous materials, in Ohio Admin. Code 4901:2-5-02. Accordingly, separate regulations of the Ohio EPA on transporting infectious waste would be in addition to (rather than instead of) those State requirements in Ohio Admin. Code 4901:2-5-02, which are enforced by the Public Utilities Commission of Ohio. By adopting the HMR as State requirements, Ohio avoids the potential for having differing State requirements preempted by the Federal hazardous material transportation law, under 49 U.S.C. § 5125, and Ohio also qualifies for the receipt of Federal grant funds under the Federal Motor Carrier Safety Assistance Program (MCSAP).

MCSAP is administered by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration, under regulations in 49 C.F.R. Part 350. In order to receive a grant under MCSAP, a State must adopt and enforce safety laws and regulations that are compatible with both the HMR and the Federal Motor Carrier Safety Regulations in 49 C.F.R. Parts 390-397. See 49 C.F.R. § 350.201(a). Certain deviations and variances from the Federal requirements will not disqualify a State from receiving Federal MCSAP funds. 49 C.F.R. §§ 350.339 - 350.345. However, an exception or exemption in the State regulations will not carry over to a Federal requirement which is directly applicable to an offeror or carrier.

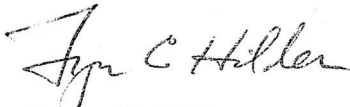
As you note, the HMR do not contain the "fifty pound exception" in Ohio Revised Code § 3734.021(A). For this reason, a person who generates less than fifty pounds of infectious waste

in any one month remains subject to the requirements in the HMR (and perhaps Ohio Admin. Code 4901:2-5-02) when that person offers the waste for transportation in commerce, even if that person is not required to comply with Ohio EPA requirements on packaging, transportation and disposal.

Susan Gorsky, of RSPA's Office of Hazardous Materials Standards, is responding separately to the questions in the email from Angela Evans.

I hope this information is helpful. If you have any further questions, you may contact me at the above address, by telephone at 202-366-4400, or by fax at 202-366-7041.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frazer C. Hilder".

Frazer C. Hilder
Attorney